



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** ISS Energy Services, Inc.

**File:** B-249323.3

**Date:** July 19, 1993

Robert B. Bowytz, Esq., Kenneth D. Brody, Esq., and Cyrus E. Phillips, IV, Esq., Keck, Mahin & Cate, for the protester. James E. Harvey for Ogden Government Services, an interested party.

Robert J. McCall, Esq., General Services Administration, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that technical proposal was improperly downgraded and that agency based its evaluation on factors not specified in the solicitation is denied where record demonstrates that proposal was properly evaluated and award to technically superior, higher priced offeror was consistent with solicitation evaluation criteria and the agency reasonably determined that the superior technical merit of successful proposal was sufficiently significant to justify award at higher price.

### DECISION

ISS Energy Services, Inc. protests the award of a contract to Ogden Allied Eastern Maintenance Corporation under request for proposals (RFP) No. GS-03P-92-DWC-0060, issued by the General Services Administration (GSA) for commercial facilities management services at the J. Caleb Boggs Courthouse and Federal Building, Wilmington, Delaware. ISS argues the evaluation and award decision was improper.

We deny the protest.

The RFP contemplated the award of a fixed-price-incentive fee contract for a 1-year base period with 4 option years. The services to be provided include operations and mechanical maintenance, custodial services, elevator

maintenance, utilities, and facility management. Offerors were to provide all the management, administrative, and technical functions for the effective and timely accomplishment of these services.

Award was to be made on the basis of the proposal determined to be most advantageous to the government, cost or price and other factors considered. The RFP provided that technical factors were more important than cost and listed the following technical evaluation factors in descending order of importance:

(1) Management Approach

- a. Operation, Maintenance, and Repair Staff
- b. Custodial Staff
- c. Management Staff
- d. Management Controls

(2) Past Performance

(3) Experience on Similar Contracts

The RFP specifically provided that management approach was significantly more important than the other technical factors and that the subfactors under management approach were listed in descending order of importance.

On August 4, 1992, GSA received seven proposals, including those of ISS and Ogden, in response to the RFP. The proposals were evaluated by a four member Source Selection Evaluation Board (SSEB). Price was evaluated but not numerically scored. As a result of the initial evaluation, three proposals were eliminated from the competitive range. The technical ratings and costs of the initial competitive range proposals were as follows:

<u>OFFEROR</u>	<u>TECHNICAL RATING</u>	<u>PROPOSED PRICE</u>
Ogden	93	\$3,920,572
Offeror A	80	3,572,961
Offeror B	77	4,465,405
ISS	67	4,154,442

ISS in its initial proposal offered a management staff that included a facility manager who was not scheduled to work fully within normal facility operating hours and who also performed duties of the chief engineer. ISS also proposed a full time administrative assistant to the facility manager which the evaluators considered to be one of the strengths of its proposal.

During discussions on October 15 and 16, the agency informed the offerors of the strengths and weaknesses of their proposals as identified in the SSEB's initial evaluation report.<sup>1</sup>

Best and final offers (BAFO) were received on October 27. ISS, in its BAFO, deleted the position of administrative assistant and offered a full time facility manager during normal business hours. Because three of the proposals contained information which was ambiguous, the agency sought clarification through a reopening of discussions on November 6, and revised BAFOs were then due on November 13. The results of the final technical evaluation were as follows:

<u>OFFEROR</u>	<u>TECHNICAL RATING</u>	<u>TOTAL EVALUATED PRICE</u>
Ogden	96.5	\$3,930,286
Offeror B	92.5	4,238,465
ISS	84.5	3,875,366
Offeror A	80.8	3,569,001

Ogden was the highest technically ranked firm and offered the third lowest price. The SSEB concluded that Ogden and Company B were technically superior in management approach and in past performance and had submitted technically superior proposals. The SSEB, noting that only Ogden provided for a full time administrative assistant to the facility manager, also concluded that an assistant was essential for prompt responses to service calls. The difference between Ogden's evaluated price and the protester's low evaluated price was \$54,760.13 for the 5-year period. The SSEB determined that the technical superiority of Ogden's offer relative to the lower-cost offers warranted the payment of the additional cost of Ogden's offer. Award was made to Ogden on January 11, 1993.

On January 22, the agency conducted a debriefing with ISS through a teleconference call. ISS was advised that its elimination of the administrative assistant position was considered a weakness and that its hours proposed for cleaning staff were below the government estimate. The agency considered both of these elements major weaknesses because the proposed custodial staffing plan did not persuasively demonstrate that the minimum custodial requirements of the contract would be met and a full time administrative assistant to the facility manager was

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<sup>1</sup>The protester does not challenge the extent and content of the discussions.

considered essential for ensuring prompt response to service calls.<sup>2</sup> The agency also expressed concern regarding ISS' limited custodial experience.

ISS in its initial protest, filed with our Office on January 25, argued that the award to Ogden was improper because its BAFO price was significantly lower than the awardee's and because ISS offered several superior technical and organizational advantages in comparison to the awardee. The agency filed a report in response to this protest on March 2, a copy of which was provided to the protester that same date. Because ISS was not initially represented by counsel when it filed its initial protest, ISS was not provided several report exhibits the agency considered proprietary or procurement sensitive. After receipt of additional documents, on March 22, the protester in its comments to the agency report amended its protest. ISS argued that award to Ogden was improper because the agency improperly gave undue weight to Ogden's offer of an administrative assistant position. ISS argues that the agency should have notified all offerors by amendment that this position was required.<sup>3</sup> ISS maintains that had the agency not improperly elevated the administrative clerk position to a solicitation requirement, ISS and Ogden were for all practical purposes technically equal, so that ISS as the lower-priced offeror should have received the award.

Our Office will examine an agency's evaluation to ensure that it was fair and reasonable and consistent with the evaluation criteria stated in the RFP. Noslot Cleaning Servs., Inc., B-251246, Mar. 18, 1993, 93-1 CPD ¶ 243. A protester's disagreement with the agency's evaluation is not itself sufficient to establish that the agency acted

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<sup>2</sup>ISS states that it eliminated the administrative assistant position because through the use of its "computerized" maintenance system combined with the presence of a full time manager dedicated solely to facilities management, the facility would be managed in the most efficient and cost-effective method.

<sup>3</sup>The protester in its response to the agency report failed to address issues raised in its initial protest and responded to in the report. We consider these issues abandoned. Where a protester's submissions fail to refer in any way to the issues originally raised and the agency's response, they do not constitute comments on the agency report. See LHL Realty Co.--Protest and Recon., B-249073.2 et al., Nov. 23, 1992, 92-2 CPD ¶ 363; Birch & Davis Assocs., Inc.--Protest and Recon., B-246120.3 et al., Apr. 20, 1992, 92-1 CPD ¶ 372.

unreasonably. CH2M Hill Southeast, Inc., B-244707;  
B-244707.2, Oct. 31, 1991, 91-2 CPD ¶ 413. Here, we  
conclude that the agency's evaluation of the proposals was  
reasonable and in accord with the RFP's evaluation criteria.

There is simply no evidence in the record to show that  
the agency gave improper weight to the offer of an  
administrative assistant in making the award. In fact, the  
record shows the opposite--Offeror B was rated technically  
superior and viewed as technically equal to Ogden even  
though Offeror B did not offer an administrative clerk. The  
record also shows that Ogden scored consistently higher than  
the protester under all evaluation factors, except one, and  
that the agency had doubts that ISS could meet the minimum  
custodial requirements of the solicitation, given its  
proposed staffing plan and limited custodial experience.  
While the SSEB in its recommendation for award did state  
that Ogden was the only offeror to provide for a full time  
administrative assistant to the facility manager and this  
was determined by the SSEB to be essential to prompt  
response to service calls, the recommendation also  
referenced Ogden's overall technical superiority in both  
management approach and past performance.

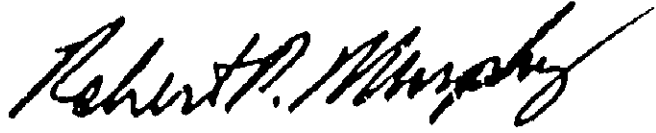
Further, notwithstanding ISS' offer of an administrative  
assistant, in the initial evaluation ISS received only 6 of  
the 10 available points under this subfactor because of  
other staffing deficiencies. ISS, in its BAFO, corrected  
some of these deficiencies and even though it eliminated its  
administrative assistant position, its final score  
increased. Even if we award ISS the total available points  
for this area, ISS' final weighted score would increase from  
84.5 to 89 which is only 5 points higher than the score upon  
which the agency based its selection and 7 points lower than  
Ogden's technical score.<sup>4</sup> GSA reports that, given the  
relative weight of technical merit over price established in  
the RFP, the narrowing of the difference in technical scores  
by 5 points (based on awarding ISS the total available  
points for the area in question), would not have altered the  
source selection decision, since ISS offer is only slightly

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<sup>4</sup>ISS suggests that since it was rated 1 point higher than  
Ogden under operation, maintenance, and repair staff  
subfactor, the most important technical subfactor under  
management approach, this shows the technical equality of  
its proposal with Ogden's. The total evaluated score for  
each offeror was a weighted score that represented the  
importance of each evaluation factor. ISS' 1 point  
advantage in this one subfactor was outweighed by Ogden's  
higher scores in the other three subfactors.

lower in price than Ogden's offer.<sup>5</sup> Stay Inc. Protective Servs., B-246336.3, Apr. 24, 1992, 92-1 CPD ¶ 393; Unidynamics/St. Louis, Inc., B-232295, Dec. 21, 1988, 88-2 CPD ¶ 609.

The protest is denied.<sup>6</sup>



 James F. Hinchman  
General Counsel

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<sup>5</sup>ISS also requests that its score under the past performance factor be increased from eight to nine because the record shows that ISS was downgraded after the evaluators reviewed the references again after BAFOs and decreased its score because it filed a claim after a contract expired. The record shows that ISS was downgraded, after further review of references, because one reference stated that ISS was not as familiar with the contract as it should have been and had performed emergency repairs that exceeded the repair threshold stated in the contract.

<sup>6</sup>Since we conclude that the administrative assistant position was not a requirement or unfairly considered, we conclude that the agency was not obligated to amend the RFP concerning this position.